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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Neveu et al.

APPLICATION NO.: 09/773,452

FILING DATE: January 31, 2001

TITLE: Game Playing System with Assignable Attack Icons

EXAMINER: Coburn

ART UNIT: 3714

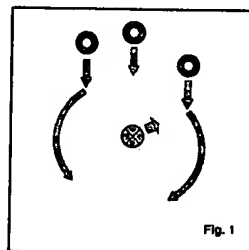
ATTY. DKT. NO.: PA3656US

DECLARATION PURSUANT TO 37 C.F.R. § 1.183 & 37 C.F.R. § 1.131

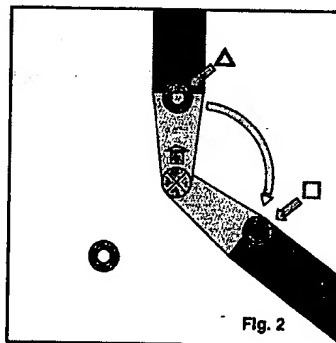
1. I, Colby B. Springer, am an attorney with the law firm of Carr & Ferrell *LLP* and duly licensed to practice law in the State of California and make the following declarations. I am thoroughly familiar with the subject matter, claims, and prosecution history of the present application including the various references cited during the course of examination. I could readily and freely testify as to the same including with regard to matters concerning conception, reduction to practice, and diligence.
2. On or about March 10, 2006, this application was transferred to Carr & Ferrell *LLP* of Palo Alto, California (Customer Number 22830) from prior patent counsel, Heller Ehrman *LLP* of San Diego, California. An executed revocation and power of attorney and statement under 37 C.F.R. 3.73(b) were submitted to and received by the U.S. Patent Office on March 16, 2006, wherein Carr & Ferrell *LLP* was named attorney of record with regard to the ongoing prosecution of the present application.
3. Also on March 16, 2006, the U.S. Patent Office issued an office action wherein the independent claims of the present application were rejected under 35 U.S.C. § 103(a) as being unpatentable over, *inter alia*, U.S. patent number 6,533,663 to Iwao et al., filed in the United States on May 30, 2000.

4. As a part of the standard due diligence conducted by Carr & Ferrell *LLP* upon the receipt of any patent prosecution file transferred from prior patent counsel and, further, in light of the newly issued office action, a thorough review of the prosecution history and certain documents that accompanied the present application from prior patent counsel was undertaken.
5. During the course of that review, it was determined that the aforementioned Iwao et al. reference is not eligible for the purpose of rendering a rejection under 35 U.S.C. § 103(a). Iwao et al. (outside the aforementioned obviousness rejection) could only qualify as prior art under 35 U.S.C. § 102(e)(2). The presently claimed invention, however, was conceived prior to the filing of the Iwao et al. reference in the United States. As a result, Iwao et al. is ineligible for the purpose of a rejection under 35 U.S.C. § 103(a).
6. Upon determination of conception of the presently claimed invention prior to the U.S. filing of the Iwao et al. reference, present counsel immediately began undertaking efforts to prepare a declaration under 37 C.F.R. § 1.131 for the purpose of 'swearing behind' the Iwao et al. reference. This included identification of evidence supporting the conception of the claimed elements and determinations as to diligence with regard to reduction to practice.
7. In the course of preparing a declaration under 37 C.F.R. § 1.131, present counsel contacted the assignee of the entire right, title, and interest in the present application—Sony Computer Entertainment America Inc.—for the purpose of obtaining signatures from the named inventors of the present application: Timothy Neveu, Jonathan Beard, Daniel Mueller, Keith Friedly, and Erik Medina. An assignment by and between the aforementioned inventors and the assignee is recorded with the Assignment Division at Reel 014720 and Frame 0557.
8. During the course of conversations with the assignee of the present application, it was determined that none of the aforementioned inventors are presently employed by the assignee. It is presently unknown how the aforementioned inventors might be contacted concerning a declaration under 37 C.F.R. § 1.131.

9. In light of the foregoing, the undersigned declares that the original inventors cannot be found to execute a declaration in accordance with 37 C.F.R. § 1.131, which requires the inventor(s) of the subject matter of the rejected claim submit an appropriate oath or declaration to establish invention prior to the effective date of the reference on which the rejection is based.
10. Based on the unavailability of the inventors, a waiver of the aforementioned inventor signature requirement is requested in accordance with 37 C.F.R. § 1.183. 37 C.F.R. § 1.183 provides for suspension and/or waiver of the any requirement of the regulations (such as Rule 131) subject to the requirements of justice. Failure to waive the aforementioned inventor signature requirement and to other refuse acceptance of the present declaration would be to unjustly require the assignee to comment and distinguish the presently claimed invention from a reference that does not legally qualify as prior art under the patent laws of the United States.
11. Further, and subject to the waiver of the aforementioned requirement, the undersigned hereby declares as follows:
 - a. The present application is for a "Game Playing System with Assignable Attack Icons," U.S. patent application number 09/773,452 filed in the United States on January 31, 2001;
 - b. Conception of the present invention in the United States is evidenced by, at least, the document attached hereto as Exhibit A, which memorializes various concepts conceived on, about, or prior to May 2, 2000;
 - c. Independent claim 64 of the present application recites 'a method of designating candidate objects with respect to an initial object in a virtual environment.' As is shown in FIGURE 1 (page two) of the document attached hereto as Exhibit A and under the heading of **Targeting**, an initial object (X) is depicted relative a series of candidate objects (O). These objects are displayed in a virtual environment such as a video game. A relevant portion of Exhibit A is reproduced here:



- d. Claim 64 further describes 'displaying a plurality of candidate objects on a display screen.' As referenced above, the document attached hereto as Exhibit A pertains to a virtual environment such as a video game. A video game would be displayed on a display device such as a monitor or television. As referenced above and under the heading **Targeting** of the document attached hereto as Exhibit A, a plurality of candidate objects are displayed. For example, three attacking enemies (O) are shown in FIGURE 1 (page two). A relevant portion of Exhibit A with regard to this claim element was reproduced above;
- e. Claim 64 further recites 'displaying a candidate range indicator on the display screen in response to actuation of a candidate input interface on an input device.' The range indicator provides 'a visual indication of a candidate range for the initial object.' The document attached hereto as Exhibit A and under the heading **Targeting** states that with regard to approaching enemies, a "player can choose to target them" whereby a "targeting arc will extend a set distance from the outer edge of the weapon's range." The document attached hereto as Exhibit A further notes that an "analog stick [may] be used for the purpose of targeting." That is, through the use of an input device, a user can cause the visual display of a targeting arc relative the game player (the initial object) and a series of candidate objects (approaching enemies). This targeting arc can be seen in FIGURE 2 (page two) of the document attached hereto as Exhibit A, a relevant portion of which is reproduced here:



- f. Claim 64 also recites 'displaying a visual indicator in association with a first candidate object . . . in response to the first candidate object intersecting at least a portion of the candidate range indicator . . . the visual indication being displayed in association with a first designation input interface comprising a system-assigned button on the input device.' The document attached hereto as Exhibit A and under the heading **Targeting** states:

[w]hen [the targeting] indicator is pressed in the direction of an enemy a button will be assigned to it. Which button is assigned to a target is indicated by an ATTACK ICON. The Attack Icon is simply a visual representation of the button that is to be used to strike a given target.

As can be seen in FIGURE 2 (page two) of the document attached hereto as Exhibit A, a 'triangle' button has been assigned to a first candidate object that intersects the candidate range indicator and displayed appropriately; a similar button (a 'square') has been assigned to another candidate object and is displayed appropriate. A relevant portion of the design summary reflecting this button assignment is shown above;

- g. The final element of claim 64 recites 'causing a predetermined action from the initial object with respect to the candidate object in response to actuation of the first designation input interface button of the input device.' The document attached hereto as Exhibit A and under the heading **Attacking Enemies** states that "[o]nce targets are picked and assigned striking them is as simple as pressing the button corresponding to that enemy";
- h. Similar claim elements are presented in the remaining independent claims of the present application;
- i. Following conception as illustrated by Exhibit A, the inventors of the present application worked diligently on the subject matter embodied in the present application. This diligence included continued work between the months of May to September 2000 with regard to further refining certain aspects of the present application that were to be embodied in a commercial video game entitled *Barbarian*;
- j. The diligence further included the authoring and development of various working papers, specifications, and code concerning certain aspects of the present application that were to be embodied in the *Barbarian* video game;

- k. This diligence further included the submission of an invention disclosure in September 2000 for consideration by the assignee of the entire right, title, and interest with regard to the filing of a patent application (*i.e.*, the present application);
- l. This diligence further included providing outside patent counsel with preliminary materials for review prior to a disclosure meeting with the inventors of the present application; those materials were provided on October 9, 2000. The aforementioned disclosure meeting was scheduled following approval of the invention disclosure for preparation of a patent application;
- m. This diligence further included the inventors of the present application meeting with outside patent counsel on October 13, 2000 with regard to developing the present patent application;
- n. This diligence further included providing outside patent counsel with additional material concerning the inventors, the assignee, and the drafting and execution of an assignment and power of attorney for the present application on October 14, 2000;
- o. This diligence further included the assignee reviewing notes taken by outside patent counsel during the course of the aforementioned disclosure meeting on October 24, 2000;
- p. This diligence further included the delivery of a first draft of the present patent application by outside patent counsel for review by the inventors on November 20, 2000;
- q. This diligence further included the review of the first draft of the present application by the inventors of the present application and the assignee following its delivery on November 20, 2000;
- r. This diligence further included the return of a 'marked up' version of the first draft of the present application by the inventors and the assignee on January 18, 2001, which followed the Thanksgiving (Thursday and Friday, November 23-24, 2000), Christmas (Monday, December 25, 2000), and New Year's Day (Monday, January 1, 2001) holidays;

- s. This diligence further included the incorporation of certain revisions into the present patent application and the return of a final draft of the present application along with the necessary inventorship documents, which were executed by the inventors on January 29, 2001 and January 31, 2001 following the inventors' final review and approval of the final draft of the present application;
- t. This diligence further included the filing of the present application on January 31, 2001 following execution of the requisite inventorship documents;
- u. This diligence further included the actual authoring and coding of the present video game, preview 'movie clips' of which were released in August 2001;
- v. This diligence culminated with the full commercial release of the *Barbarian* video game in the United States on or about June 27, 2002;
- w. All of the work and efforts recited above were directed to attaining the aforementioned reduction to practice of the presently claimed invention. As such, priority is hereby claimed under 37 C.F.R. § 1.131 over U.S. patent number 6,533,663 to Iwao et al., filed in the United States on May 30, 2000.
- x. Additional evidence of diligence may be available. Notwithstanding, the presently submitted declaration and exhibit is believed to be sufficient for the purposes of evidencing prior conception and diligence with regard to reduction to practice. The assignee of the entire right, title, and interest expressly reserves the right to present such further evidence as may be appropriate in light of ongoing prosecution of the application. The present submission is in no way meant to be interpreted as limiting or indicative of all evidence of prior conception that may be available.

- y. I declare that all statements made herein of my own knowledge are true and that all statements made herein on information and belief are believed to be true and, further, that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

6/12/06

Date

Colby B. Springer

Combat Skills

Combat skills encompass any skill that is related to combat. Throughout the course of the game the player will be faced with one or multiple enemies. The player must learn to target and defeat enemies that will attack from all sides. Learning how and when to use certain weapons in each combat situation will become a valuable skill the player must also learn if he is to complete the game. Attack combos will also be an important skill for the player to learn as it will help defeat multiple enemies faster.

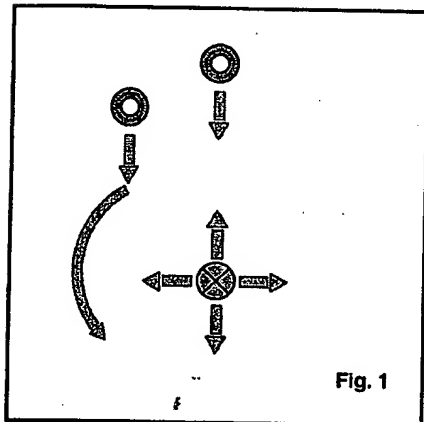


Fig. 1

Engaging the Enemy

In Barbarian the player will be able to fight the enemy characters in a multitude of different ways. The player must choose the correct method of attack, which weapon to use and which enemies to engage will be the primary concern for the player. Enemy characters can be engaged in one of two ways.

No Targeting: Whether one or multiple enemies the player can fight using only the attack buttons and the facing of the character on the screen. In this example (Fig. 1) the two enemies come into range of the player. When this happens the enemies will maneuver around Sluggo and begin their attack. To strike them, the player must use the Directional control to face them and use the attack buttons to strike whatever is in front of him.

Targeting: The below example works the same with one enemy as it does with many. As enemies enter the players view range the player can target them. The right analog stick will be used for the purpose of targeting. When the stick is pressed in a direction a target indicator will appear. When this indicator is pressed in the direction of an enemy a button will be assigned to it. Which button is assigned to a target is indicated by an ATTACK ICON. The Attack Icon is simply a visual representation of the button that is to be used to strike a given target. For example: and blue X icon for the X button. The icons will always be assigned in the same order; Triangle, Square then Circle. In figure 1 the enemies enter into the players view range, they then move into a position around Sluggo. The player can choose to target them before or after they get into position. The targeting arc will extend a set distance from the outer edge of the weapon's range (shown in dark green). In the example below the player waits to see where the enemies will move to before choosing his targets. In figure 2 the player has pushed the analog stick up and around to the right (in a circular, sweeping motion). When this happens Triangle and Square buttons are assigned to these targets, the stick is then released and the targeting indicator disappears. In figure 3 the player decides he wants to also target the third enemy. The analog stick is then pressed in his direction and the Targeting indicator appears to assign the third and final button to him.

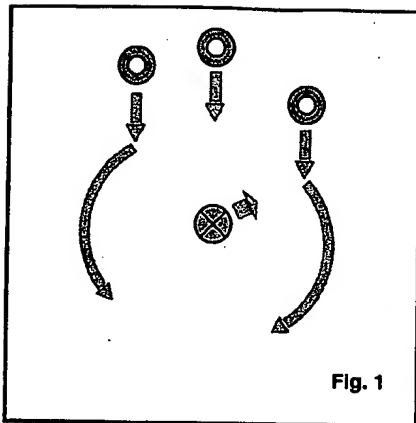


Fig. 1

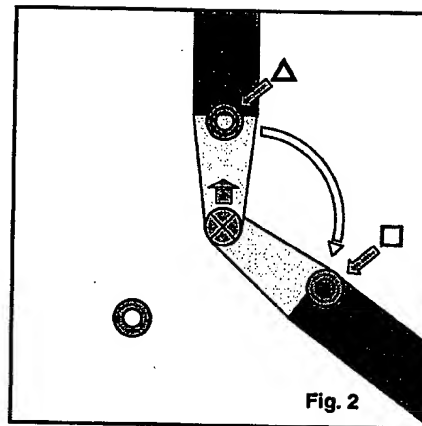


Fig. 2

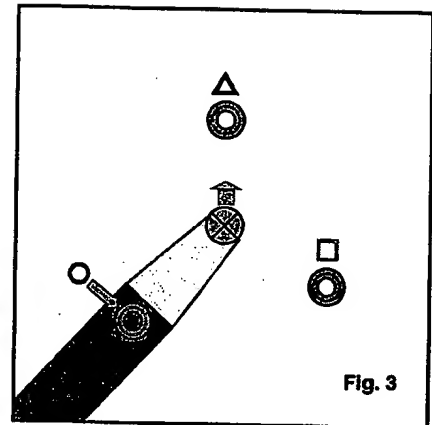


Fig. 3

When the player targets his first enemy his orientation and his facing will change to meet that enemy. Subsequent target selections will NOT change the players facing. (above diagrams show players facing with a gray arrow). By default the player will face the enemy he targeted first. As you can see above the players facing does not change when targets are selected.

If more than 3 targets are in range at once (fig. 4) the player must wait until one is killed before the new target can be selected. This means the player will need to be very aware of who he has selected as targets. When one of the targeted enemies are killed (fig. 5) the button that it used will be freed. It now becomes available for assigning to another target. At this point one of two things will happen. If no new target is immediately selected the player will turn to face the closest targeted enemy. In the example below the player kills the enemy marked as Triangle. As the enemy is dying (falling to ground, whatever) the Triangle icon will flash. This is an indicator that the button at this time can be re-assigned. If the player re-assigns it before it stops flashing he will turn to face this new target (fig. 6). If the player does re-assign the target he will turn to face the closest targeted enemy (In this example the enemy marked as Square).

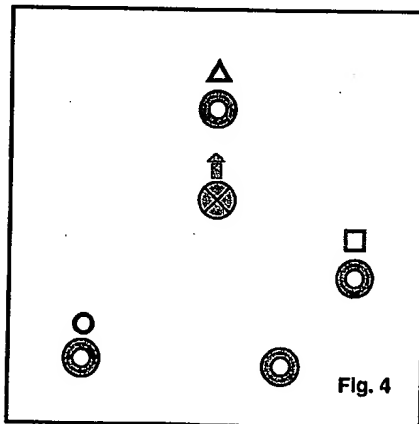


Fig. 4

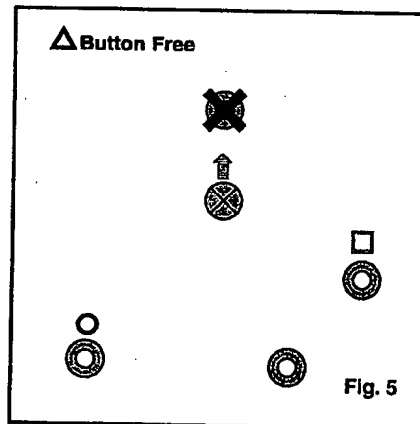


Fig. 5

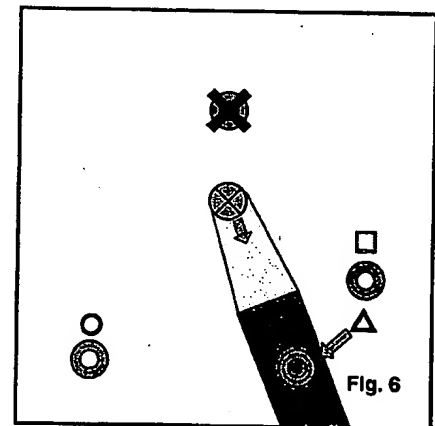


Fig. 6

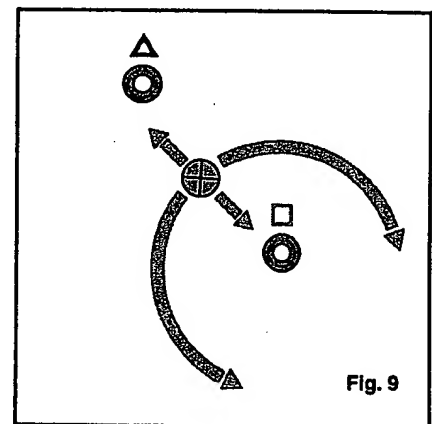
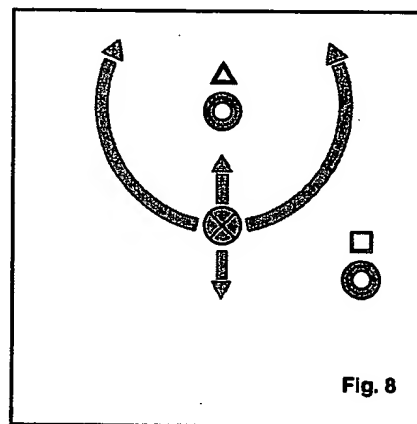
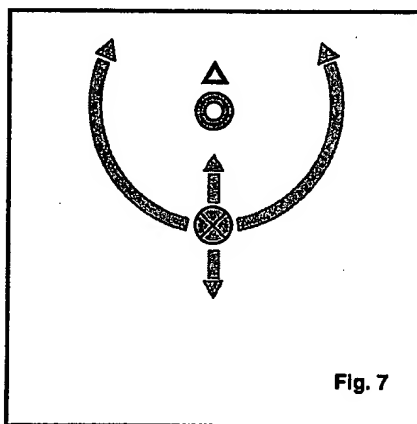
Attacking Enemies

Once targets are picked and assigned striking them is as simple as pressing the button corresponding to that enemy. In the examples above three or more enemies are within range of Sluggo's attacks. When there are less targets than there are buttons the extra buttons can be used to modify the attack. This will change the dynamics when fighting one or multiple enemies.

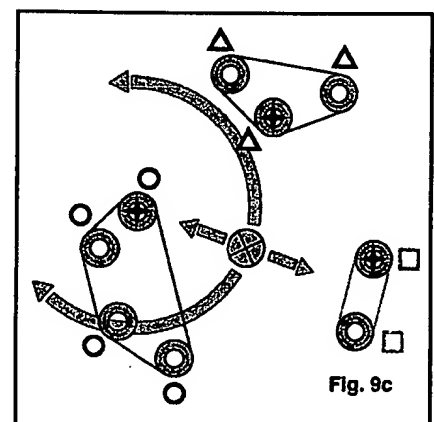
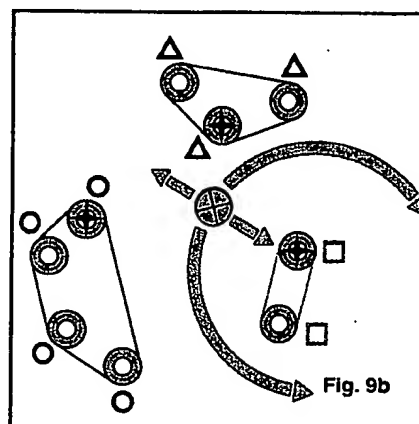
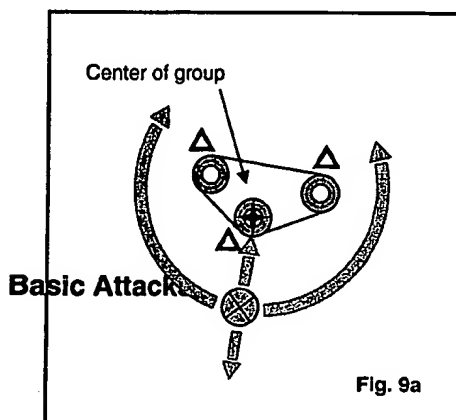
Facing your Target

One important aspect of combat in Barbarian is moving yourself around your environment during combat. As stated above the enemy you are facing depends on two things. Who you targeted first and who you are attacking. Your facing, when beginning an engagement, will automatically lock to the first enemy you targeted. The player will continue to face this enemy until he decides to strike a different one. When the player is facing an enemy all movement revolves around that target. Up and down on the stick will move the player nearer and farther from the enemy. Left and right on the stick will move him around the target accordingly.

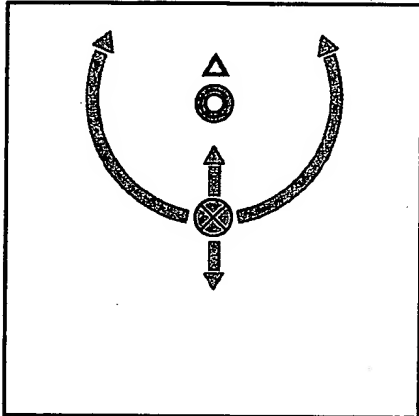
In fig. 7 one enemy is on screen. This is the only target and the player is turned to face him because he was the first to be targeted (Buttons assigned in order. Triangle, Square, Circle). In fig. 8 the players facing is toward the enemy marked as Triangle as well. Again because the Triangle enemy was the first targeted. In fig. 9 the player is orientated around the enemy marked as Square. This occurs when the player presses the Square button to strike that target. If the target was marked as Circle, then he would strike and turn to face him when the player uses the Circle button to attack.



In the case of fighting groups of multiple enemies the player's facing will be centered around the closest enemy in that group (Fig. 9a). The closest enemy is chosen when the targets are initially locked. When the player switches the enemies he is facing he will be locked onto the center of the new group, as you can see from each example below. In some cases this will cause some enemies to be outside the player's swing arc. When this is the case it is up to the player to maneuver himself in the environment to find the best position to strike all enemies.

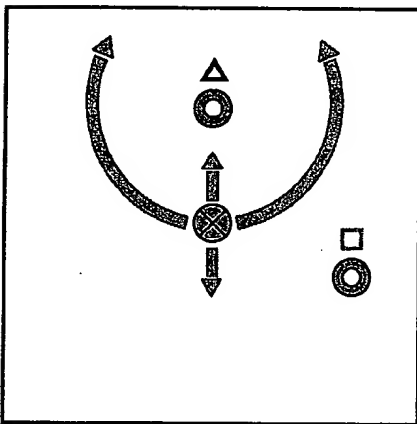


The player's basic attack is essentially to simply press the button that is assigned to a target. Different, more elaborate combos can be achieved by using buttons that are not assigned to a target. Button functions will be as follows for the different number of targets.



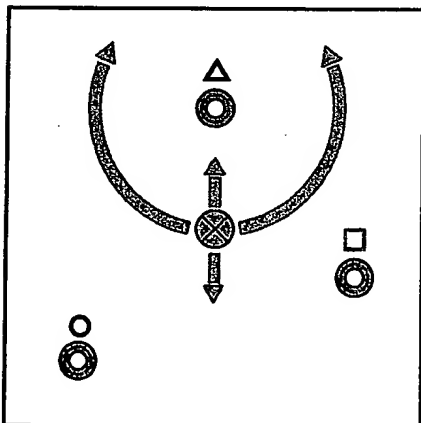
One or no enemies targeted.

- : Attack
- , or : Initiate combo (against Triangle enemy)
- or : Secondary Attack
Against Facing Enemy.



Two Enemies Targeted

- : Attack Enemy
- : Attack Enemy
- : Secondary Attack (Toward Facing enemy)
- , : Initiate Combo Towards Enemy
- , : Initiate Combo Towards Enemy



Three Enemies Targeted

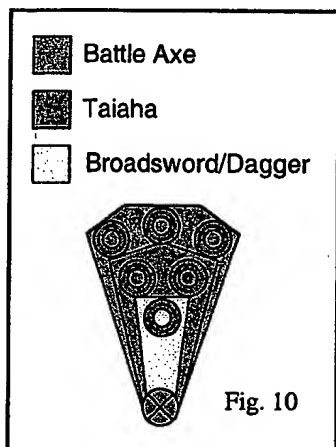
- : Attack Enemy
- : Attack Enemy
- : Attack Enemy

There are advantages and disadvantages when the player has multiple targets selected. When the player only has one target selected he can use the other buttons to modify his basic attack. The more enemies that are

targeted the fewer options to attack the player will have. Players may choose to target fewer enemies to have more combo attacks available to him, or he may choose to target multiple targets to more easily strike enemies surrounding him.

Weapons

Sluggo's weapons form the backbone of his offensive capability. He will never go unarmed except when sneaking and interacting with the environment. His basic, default weapon will be a large Broad Sword (hand and a half, broad bladed, double edged sword). Throughout the game he will find weapons that are more effective against larger groups. As the player progresses through the game weapon pick-ups will be provided with regularity. This way the player can find, learn to use, and decide which weapon he prefers to use and which weapons effect which enemies in more devastating ways.



Weapon Ranges and Targeting

The different weapons in Barbarian will vary in effect in two ways. Some weapons will have greater range than others. Also some weapons have the ability to target multiple enemies at once. For example the broadsword (shown in the above examples) can target one enemy per button, giving the player the ability to target a maximum of three enemies at any given time. With the Taiaha, the player can assign two enemies as one target. So, with a single button press the player can swing at and strike (if all enemies are within range) two targets. A list of the weapons and their ranges are shown below.

Figure 10 shows the range and arc of the different weapons. When targeting enemies the Targeting arc will dictate how many enemies can be assigned to one button.

Unarmed mode and use of the bow will follow a similar system as stated above with the following exception: The player can use the targeting system as with the other weapons. However, **ONLY ONE ENEMY CAN BE TARGETED AT A TIME**. This means that if the player targets an enemy as normal the Attack Icon will appear above the target. If the player attempts to target a second enemy the single Attack Icon will switch from one enemy to the new one.

Attacks can be performed as if one target is locked. The Bow will be used in a fashion somewhat similar to the other weapons with one exception. The locked target can be shot at by using the button indicated by the Attack Icon. The modifier buttons will attack the selected target as well, however, these attacks will be punches.

In the example below six enemies enter the area. In this situation Sluggo is armed with the Ball and Chain. As with the example with the sword (pg. 4) the player waits until the enemies get into a position before targeting. The player then presses up on the stick and rotates it around to the right. This targets the enemies in front of the player as Triangle and the enemies to the side as Square. Which button is assigned to a target will depend on three things.

- 1) If the targeting arc is filled with enemies the next group (or individual) will be assigned to the next button.** As you can see in fig. 12 three enemies are within the target arc. In this case the weapon being used is the Axe, which can lock onto a maximum of three enemies per button. In this example once the player sweeps around to assign the Square enemy the analog stick is released.
- 2) If the player releases the analog stick after targeting enemies the next use will assign the next button.** In fig. 13 the player, after assigning the first two groups by targeting and rotating the arc

around, decides to target the remaining enemies. Since the analog stick was released then used again, the next button will be assigned.

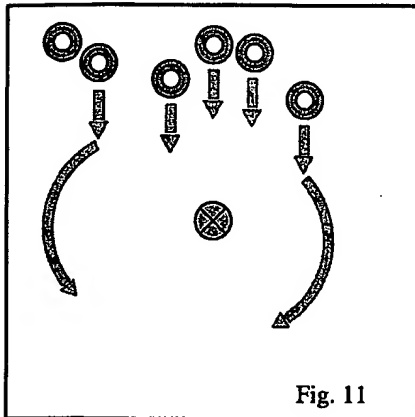


Fig. 11

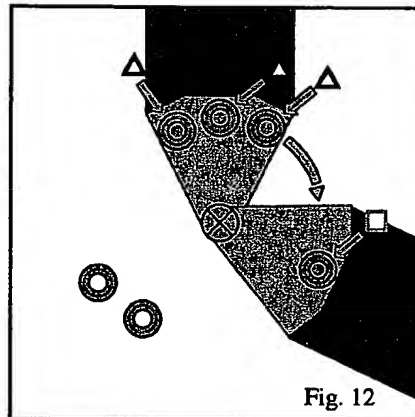


Fig. 12

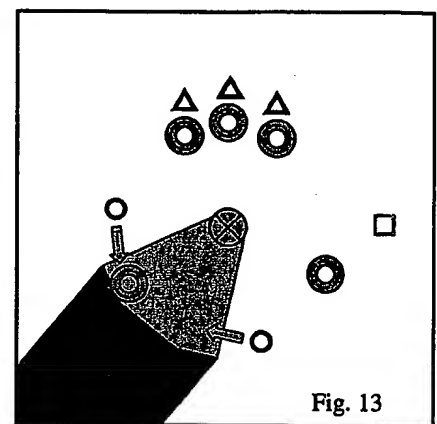


Fig. 13

- 3) If the next enemy targeted (by sweeping) is no more than the maximum distance of the weapon's arc the same button will be assigned. In the above example the enemies are in fairly tight groups and therefore easy to target onto one button. This, however, will not always be the case. In fig. 13a the third enemy is out of the immediate target range. If the player continues to sweep the arc around to the unassigned enemy (fig. 13b) he will be assigned to Triangle. This is because the two enemies are not more than the weapon's arc apart. They are now all assigned (fig. 13c). This is, again, using the Axe as the example weapon.

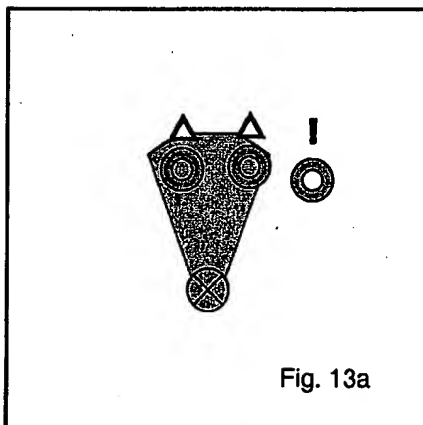


Fig. 13a

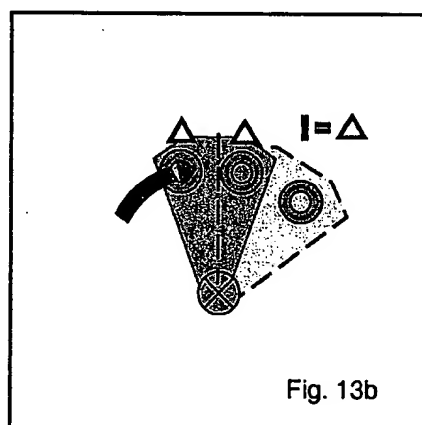


Fig. 13b

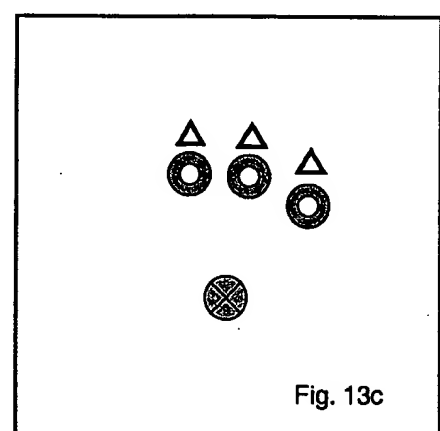


Fig. 13c

The Attack Icon

When an enemy is locked onto as a target the icon that is above the character will give the player information about him. The different states the icon will take is listed below.

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